United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

76-1444

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Respondent,

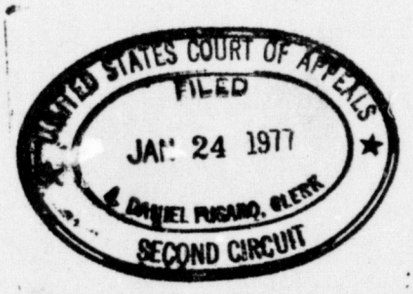
vs.

HAROLD JACOB MIMS,
Defendant-Appellant.

Docket No. 76-1444

BRIEF FOR APPELLANT

WITH APPENDIX



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PAGINATION AS IN ORIGINAL COPY

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STATEMENT OF THE CASE

This is an appeal from the judgment of the District Court of the Western District of New York rendered September 13, 1976, convicting the defendant, after trial by jury, of the crimes of Bank Robbery and Conspiracy to Commit Bank Robbery. Defendant was sentenced upon said conviction on September 13, 1976 to concurrent terms of imprisonment as follows:

a) On the Bank Robbery, to a term of eight years;

b) On the Conspiracy, to a term of five years.

STATEMENT OF THE FACTS

On June 30, 1975 at the Elmgrove Branch of the Marine Midland Bank, Gates, New York, a black male asked for information from one of the bank's officers, Richard Ford (Trial Minutes at 148-149). Ford became suspicious and pressed a button that activated the bank cameras (T.M. at 150). The camera produced four photographs of the man, who was later identified as one James Miller (T.M. at 214; 218-224).

The following day, Miller returned at about 9:10 a.m. (T.M. at 151). He again approached Ford, pointed a gun at Ford's head, and told him to "freeze" (T.M. at 152).

Miller, who was accompanied by three other black males, ordered Ford and a teller, Delores Eldridge, to open the main vault (T.M. at 152-154; 257-258).

After the vault was opened and money removed, Ford and a number of others, were closed inside with instructions not to come out (T.M. at 156-157). The four robbers fled out the front door, and sped away in a Pontiac LeMans that bore New York Registration 109EFL (T.M. at 325).

A report of the incident was taken, and information with regard to the "getaway" car was transmitted to the Buffalo Office of the F.B.I. (T.M. at 375). On duty at the time was an agent, Phyllis MacLean, who happened to live in the same apartment complex as did the defendant and his brother, Malachi Mims (T.M. at 376). Somehow, apparently prior to this time, Agent MacLean had "reviewed records that that car had been to the apartment complex and the occupant had visited Mims" (T.M. at 378), although she had never seen it there herself (T.M. at 382-383). Upon hearing the car's description, she notified her supervisor that "three vehicles should be considered as switch cars" (T.M. at 376). She provided a description of these vehicles, together with the Registration numbers and names of the respective owners. It is not apparent in the record by what process or why she had obtained this information prior to knowing of its im-

portance. Nevertheless, the information was transmitted to various police agencies (T.M. 377; 387).

A State Trooper and Genesee County Sheriff, both in separate unmarked vehicles, spotted two of the described vehicles, a Camaro and a Cadillac, and followed them (T.M. at 388). After a time, the Cadillac turned, and upon proceeding for a time at a high rate of speed, subsequently stopped (T.M. at 397). Defendant, the driver of the vehicle, then got out and was placed under arrest for bank robbery (T.M. at 398-399). The Cadillac had been registered to Angelo Miller (T.M. at 377). There were no items found in it which were connected to the bank robbery (T.M. at 401).

The Camaro, however, had crashed after a high speed chase (T.M. at 420-422). It was subsequently determined that it had been owned and operated by Malachi Mims, and upon a search of the vehicle proceeds and evidence from the bank robbery were discovered (T.M. at 432).

While at the State Police headquarters in Batavia, New York, at about 11:40 a.m., defendant was questioned by Agents Green and Sculimbrene of the F.B.I. (Hearing Minutes at 7). Defendant was advised by Agent Green as to his and Agent Sculimbrene's identity, and was given an Advice of Rights form. Defendant stated that he understood it and he signed it.

Defendant then made a series of statements that were

testified to both at a pre-trial hearing, and at the trial below, itself. At the hearing, Agent Green testified that defendant admitted that he knew that the car he had been driving belonged to a participant in the bank robbery; that the Camaro contained proceeds and evidence from the robbery; that he had driven to Rochester with one of the bank robbery participants; and that he had been near the scene of the robbery and had observed a police officer enter the bank during the robbery (H.M. at 15-16). Agent Sculimbrene's testimony was consistent with Agent Green's (H.M. at 77-83). At trial, Agent Green testified as to the same admissions, and added that defendant had also told him that he had met with the participants in a school yard after the robbery (T.M. at 517-518).

Defendant then, at 12:35 p.m., asked to call his attorney, Carl Dobozin, and to have F.B.I. Agent Richard Schaller present (H.M. at 16; 66; T.M. at 518). Defendant was allowed to call the office of his attorney and did speak with him (H.M. at 128). At about 1:20 p.m., Agent Schaller arrived (H.M. at 107). Agent Schaller had known defendant for eight years (H.M. at 97), and had a confidential relationship with him as an informant (H.M. at 98). Agent Schaller advised defendant of his rights and also told him that all prior agreements were no longer in effect (H.M. at 99). When asked by the defendant as to what charges on which he was being held,

Agent Schaller responded that the F.B.I. had not completed its investigation, that they would have to discuss the case with a U.S. Attorney, and that defendant was only under arrest by the State Police for speeding (H.M. at 100-101; T.M. at 605, 622).

Defendant then asked that Agents Green and Sculimbrene leave the room, which they did (H.M. at 101; T.M. at 609). At that time, defendant gave substantially the same statement as he had given earlier, adding that he had assisted in the planning of the robbery; that the Pontiac LeMans had been left at the airport in Rochester, New York; that they changed clothes after the robbery; and that he was hoping to co-operate in exchange for a lighter sentence (H.M. at 101-103; T.M. at 609-614).

Defendant then again asked to speak with his attorney. Agent Schaller called Mr. Dobozin's office, and a short time later Mr. Dobozin returned the call. Defendant then talked with his attorney. Mr. Dobozin, at that time, informed Agent Schaller that he did not wish the interview to continue (H.M. at 103; 65).

The interview was then stopped, Agent Schaller received authorization for a warrant from a U.S. Attorney, and defendant was placed under arrest for bank robbery at 3:05 p.m. (H.M. at 68-69, 104; T.M. at 617).

Subsequently, while being transported to Buffalo, defendant stated that if he were allowed to plead to con-

spiracy he would testify (T.M. at 617-618). The next day, after conferring with his attorney (H.M. at 71), and after a hearing upon a charge of Conspiracy only (T.M. at 569-570, 585), defendant again spoke with Agent Green and further detailed his prior statements (T.M. at 526-531). This conversation was had after Agent Green had also been requested not to further interview defendant (H.M. at 30-31).

On July 9, the Pontiac LeMans was located in a hospital parking lot in Rochester (T.M. at 331). The car was dusted for fingerprints and on the outside of the driver's side window were found three prints which were subsequently identified as those of the defendant (T.M. at 346; 363). In connection therewith, Government Exhibit 18 which had as a part a standard "mug shot" of defendant, was introduced into evidence (T.M. at 358). Over objection, a fingerprint expert testified that in his opinion the fingerprints on the car had only been there for five to six days (T.M. at 368). However, he was not able to offer an opinion as to how long they would have remained intact under ideal conditions (T.M. at 368-369).

Also, over objection, Agent Schaller was allowed to testify at trial as follows:

> "When I first came in the room, I said "Hello" to him. I had known Jake Mims. I told him....(objection)
> "I told him that I understood that

he had asked to see me, and I was up here to talk to him. I told him that any prior agreements that we had regarding his furnishing information..." (objection).

"I told him that any prior arrangements that he had with me concerning the furnishing to me of information on a confidential basis was no longer in effect."
(objection and motion for mistrial)

"I told him that some time ago that we had an agreement..."
(motion for mistrial)
"that any information he furnished to me on a confidential basis I would not use against him in a court of law, nor would I use any information that he had given me to develop other evidence against him about violations of law. I told him that those agreements were no longer in effect, ..." (T.M. at 602-604).

Defendant's request for an instruction on fingerprint evidence (Appendix at 4) was denied (T.M. at 671).

Of the three counts submitted to the jury, defendant was acquitted of the Second Count of Bank Robbery, and convicted on Counts 1 and 3.

Subsequently, defendant was sentenced and has appealed to this Court from said convictions and from all proceedings and judgments had thereon.

In an opinion rendered at the conclusion of a pretrial hearing, the Trial Court ruled all of defendant's statements admissable (H.M. at 146).

POINT I

THE EVIDENCE SUBMITTED BY THE GOVERNMENT WAS NOT OVERWHELMING.

There was no evidence introduced at trial to indicate any direct participation in the bank robbery by the defendant. Of the many eyewitnesses to the incident, itself, as well as to the immediate flight therefrom, not one such witness was even asked if he recognized the defendant as being one of the participants. Defendant's statements in no way implicated him as such a participant. The fingerprint evidence introduced was taken from the "getaway" vehicle a substantial period of time after the incident. Also, there was no showing of inaccessibility of the vehicle to the defendant other than at the time of the robbery. Further, there was evidence introduced that defendant had legal access to the vehicle (T.M. at 643). See, United States v. Corso, 439 F. 2d 956 (4th Cir. 1971).

Thus, if defendant's conviction for bank robbery is to stand at all, it must be on the basis that defendant aided and abetted the principal participants.

The fact that defendant was not physically present in the bank does not preclude his conviction as an aider and abettor. See, eg., United States v. Waters, 461 F.2d 248 (10th Cir. 1972).

However, the crime of aiding and abetting is one re-

quiring a "purposive attitude." United States v. Peoni, 100 F.2d 401, 402 (2nd Cir. 1938).

Mere association with the participants, as opposed to active participation with them, is not sufficient to establish guilt. Baker v. United States, 395 F.2d 368 (8th Cir. 1968); Ramirez v. United States, 363 F.2d 33, 34 (9th Cir. 1966). Mere knowledge of a crime, or mere presence at the scene of it, is not sufficient evidence to convict a defendant of knowingly participating in that crime. United States v. Samaniego, 437 F.2d 1244 (9th Cir. 1971); accord, United States v. Williams, 341 U.S. 58, 64, Jn. 4 (1951), Hicks v. United States, 150 U.S. 442, 450 (1893).

Such knowledge or presence must be accompanied by adequate evidence of a culpable purpose before actions may be deemed aiding and abetting. When it is shown that a defendant's actions designedly encourage the perpetrators and facilitate the unlawful deed, or stimulate others to render assistance to a criminal act, than that defendant may be deemed to have aided and abetted a crime. Bailey v. United States, 416 F.2d 1110, 1113-1114 (D.C. Cir. 1969).

The only proved physical acts in the instant case are that the defendant acted as the driver of a vehicle that accompanied another vehicle that contained proceeds and evidence from a bank robbery, and that he speeded

while doing so. As such, the evidence is insufficient to convict. See, United States v. Mallory, 460 F.2d 243 (10th Cir. 1972), cert. den. 409 U.S 870; and, also, United States v. Jones, 418 F.2d 818, 819-820, 828 (8th Cir. 1969) (evidence insufficient where it was shown that defendant had a portion of "loot" and had "cased" the area), United States v. Garrett, 371 F.2d 256 (7th Cir. 1966)(evidence insufficient where it was shown that defendant had borrowed the car that was used in the robbery, and where money wrappers and incriminating evidence were found in his basement).

The only indication that defendant's purpose was to facilitate a forcible taking of money from the Elmgrove Branch of the Marine Midland Bank comes from statements allegedly made by the defendant, himself.

On appeal, the government is entitled to all reasonable inferences to be drawn from the evidence. And here, it is reasonable to infer that where one actually helps plan a robbery he has as his purpose the facilitation of that robbery. However while the government is entitled to all such reasonable inferences, it is not entitled to any assumption that the evidence providing those inferences was so patently credible as to be overwhelming.

Defendant is not contending here that the verdict was against the weight of the evidence. Neither is defendant alleging that the admissions were not believed by the

jury. However, defendant is contending that such evidence as was necessary to convict here was not overwhelming in either its quantity or quality.

No statement was ever signed or acknowledged in writing by the defendant. All original notes taken by the agents were destroyed. There were additions made from memory at trial that were not in the 302 forms (see, eg., T.M. at 624), and additions made at trial not found in testimony given at the pre-trial Hearing.

It is respectfully submitted that reasonable jurors could have found that Agent Schaller was mistaken in his recollection of this vital evidence, and that they could reasonably have acquitted defendant of all three counts as opposed to only one.

POINT II

THE ADMISSION AND USE OF FINGERPRINT EVIDENCE REQUIRES REVERSAL.

Where evidence of a defendant's involvement in a crime is not overwhelming, the existence of error is more harmful. See, eg., United States v. Stephens, 486 F.2d 915 (9th Cir. 1973).

The introduction into evidence of testimony concerning defendant's fingerprints on the "getaway" car window in the instant case was error.

There was no direct proof that defendant was in the "getaway" car at the time of the robbery. See, eg., United States v. Jarboe, 374 F. Supp. 310 (W.D. Mo. 1974), aff'd. 513 F.2d 33. Under proper procedures, fingerprint evidence would have been admissable to so indicate defendant's identity. United States v. Cary, 470 F.2d 469 (D.C. Cir. 1972).

However, a jury should not be made to speculate as to whether or not the defendant touched the object in question during the commission of the crime, or some other legitimate occasion. Cf., Borum v. United States, 380 F.2d 595 (D.C. Cir. 1967). The evidence should clearly indicate that defendant had no access to the object except

on the occasion of the commission of the crime. Hiet v. United States, 365 F.2d 504 (D.C. Cir. 1966); accord, United States v. VanFossen, 460 F.2d 38 (4th Cir. 1972), United States v. Corso, 439 F. 2d 956 (4th Cir. 1971).

In the instant case, there was no such showing. The prints were not fresh, see, United States v. Roberts, 481 F.2d 892 (5th Cir. 1972), they were on the outside window only, and there was no evidence introduced to show that they could only have been impressed during the commission of the crime. Corso, 439 F.2d 956, supra.

Further, this evidence was improperly stressed. Agent Lockhart was allowed to testify, over objection, that the prints had been on the car only five to six days. This was in answer to a question that was framed in terms of this vehicle having been in a certain place and under certain condition, when there was absolutely no proof offered to substantiate that the car had actually been in that place, under those conditions and for that entire length of time. (T.M. at 368). As such, the question of the prosecutor was without foundation, and the opinion should have been excluded. Also, in summation, additional importance was placed on this evidence. (See, Summation Minutes at 32). Such admission and use of the fingerprints, as was done in this case require reversal.

The Trial Court failed to charge as requested by defendant (see, Defendant's requests to Charge, p.4, Fingerprints, Appendix at 41). In absence of a sufficient charge of its own with regards to inaccessibility, this also warrants reversal. Cf. United States v. Farley, 292 F.2d 789 (2d Cir. 1961), cert. den. 369 U.S. 857 (Failure to include special charge as to fingerprint evidence not error, where charge actually given was adequate).

POINT III

THE INFERENCE OF PRIOR CRIMINAL CONDUCT ON THE PART OF THE DEFENDANT REQUIRES REVERSAL.

A trial court should take all reasonable measures to avoid a situation where "...the jury might convict not for the crime charges, but because, as evidenced by other criminal conduct, the accused is a person deserving of punishment (citations omitted)." People v. Fiore, 34 N.Y.2d 81, 84 (1974).

A standard mug shot places an aura of criminality about a defendant, and places in the viewer's mind a picture of defendant as a criminal. As such, its admission into evidence in absence of materiality is error, although in most cases its admission by itself will not warrant reversal. United States v. Diverse, 464 F. 2d 80, 84 (8th Cir. 1972).

Additional here, however, was further evidence inferring that defendant was of a criminal nature. The testimony of Agent Schalier explicitly set forth at length that defendant had been involved in "violations of law" for which he was not prosecuted solely because he acted as an informant. There was no reason for such testimony to have been introduced here, particularly in

view of the fact that Agent Schaller had just testified that defendant had waived his constitutional rights. The testimony came on direct examination, and there had been no prior questioning by defense counsel to open the door for its admission.

There is little difference between this situation and where there is improper use of evidence of prior convictions. In both instances, a jury is being encouraged to convict because they have before them not a defendant who has committed a particular crime, but rather a defendant who is a criminal in general, deserving of punishment for the safety of society.

Courts have long attempted to exclude such evidence from the decision making process of juries, in absence of some materiality that would outweigh the inherent prejudice. See, Federal Rules of Evidence Rule 404(b); and, also, Michelson v. United States, 335 U.S. 469(1948).

Here, there was no materiality as regards either the mug shots or the testimony of defendant being an informant. Therefore, their admission was error requiring reversal.

POINT IV

PROSECUTORIAL MISSTATEMENTS OF EVIDENCE AND ENCOURAGEMENT OF SPECULATION IN SUMMATION REQUIRE REVERSAL.

Ordinarily, prosecutorial misstatements of evidence in summation do not constitute reversible error. See, eg., United States v. Pravato, 282 F.2d 587 (2d Cir. 1960). However, where the case against a defendant is not overwhelming, such misstatements may provide grounds for reversal. Locken v. United States, 383 F.2d 340 (9th Cir. 1967).

> "When a prosecutor misstates facts in his closing remarks or states facts outside of the record in such a way as to prejudice a defendant, a new trial is required." United States v. Newman, 490 F.2d 139, 147 (3rd Cir. 1974)

Accord, United States v. Latimer, 511 F.2d 498, 502-3 (10th Cir. 1975); United States v. Torres, 503, F.2d 1120, 1126 (2nd Cir. 1974) (government attornev's argument created an unwarranted implication).

In the instant case, there was no testimony, either by opinion, or otherwise, as to what is commonly worn by bank robbers. Nevertheless, the government attorney stated in summation, "Yes, bright clothing is frequently used in bank robberies." In doing so, he made himself

an unsworn witness by reason of interjecting his experienced opinion.

Government's Exhibit 10 (Index of Exhibits, Number 3; T.M. at 218, 223), was a series of four photographs taken by the bank camera on June 30, 1975, when Mr. Ford became suspicious of James Miller. The only person identified in these pictures was James Miller. With regard to them, the prosecutor stated,

> "There are four of them and they show a sequence. They show Miller, who you remember Ford described by pointing an arrow -- but look not only a Miller. I want you to take a look at this fellow over here (indicating), who was walking out the front door, and look where he is looking. He is looking into the vault area. As he walks toward that door, his eyes are glued on the vault area, and then he goes out the front door. Look at the glasses, and then look at the defendant. ... Examine the side view of the fingerprint card and compare it to that photograph." (Summation Minutes at 21)

Here, the prosecutor was asking that the jurors speculate first, on whether or not the pictures showed a sequence; second, whether or not because a man is looking at a vault area he intends to rob it; and third, whether or not an unidentified figure in a bank photograph resembles an identified figure in a standard mug photo.

There was no basis in testimony for this requested speculation. And, it only further emphasized the aura of criminality presented by the mug shot. (see, Point III, supra)

Finally, the prosecutor again misstated the evidence when he said,

> "...the fact that those fingerprints would wear off after eighteen days when the car was found, that he used with permission of Woodward, is important. The fact that they were probably put on July 1st is important." (Summation Minutes at 32)

There was testimony neither that the fingerprints would wear off after eighteen days, nor that they were probably put on July 1st. The suppositions of the government attorney, however, had by this time become "fact" in his mind.

Objections by counsel were discouraged by the Trial Court (Summation Minutes at 4, 23, 34).

POINT V

THE RULING OF THE TRIAL COURT ADMITTING ALL OF DEFENDANT'S STATEMENTS INTO EVIDENCE WAS ERRONEOUS.

Defendant consulted with his attorney on at least two occasions, but he nevertheless gave statements to the F.B.I. agents. It is not known whether or not he was advised to make no statements, but even if so, he would not have been required to follow that advice. See, Commonwealth of Pennsylvania ex rel. Craig v. Maroney, 348 F.2d 22 (3rd Cir. 1965).

It is known, however, that the bulk of these statements was given to one with whom he had a confidential relationship, and after he was told by that person that he was only under arrest for speeding, and that his case would have to be reviewed. Also, such statements were encouraged by the disparity of charges between himself and his brother (T.M. at 570, 585-589).

It is respectfully submitted that under the totality of the circumstances, defendant's statements were not the product of an essentially free and unconstrained choice by the maker. See, generally, Schneckloth v. Bustamonte, 412 U.S. 218, 223-228, 235-241 (1973).

CONCLUSION

IN THE ABSENCE OF OVERWHELMING PROOF, AND IN LIGHT OF THE CUMULATIVE EFFECT OF ERRO AT TRIAL, DEFENDANT'S CONVICTIONS SHOULD BE REVERSED, AND REMANDED ON COUNTS ONE AND THREE.

Respectfully submitted,

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STATE OF NEW YORK
UNITED STATES DISTRICT COURT COUNTY OF MONROE

UNITED STATES

-vs-

HAROLD JACOB MIMS

CR 1975-160

REQUESTS TO CHARGE

Flight.

1. Whether the evidence shows flight is a jury question.

Whether or not evidence of flight shows a consciousness of guilt and the significance to be attached to any such evidence, are matters exclusively within the province of the jury.

In your consideration of the evidence of flight, you should consider that there may be reasons for this which are fully contested with innocence. These may include fear of being apprehended, unwillingness to confront the police or reluctance to appear as a witness. Let me suggest also that a feeling of guilt does not necessarily reflect actual guilt.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The mere fact that an automobile is speeding is not evidence of flight unless that automobile or the individual operating it can be actually connected by independent evidence to the commission of a crime or other unlawful act.

If the Government has not proven to you beyond a reasonable doubt that the defendant and the automobile he was driving were at as near the scene of the crimes alleged in the indictment, then you may not consider that fact as circumstantial evidence of consciousness guilt and such evidence must be disregarded by you

in your deliberations.

2. The mere knowledge that a crime is being committed is not sufficient to establish that the defendant aided and abetted the crime or crimes committed, unless you find beyond a reasonable doubt that the defendant was a participant in the commission thereof.

Conspiracy.

3. The Government must establish beyond a reasonable doubt that each member of the conspiracy had a knowing, special intent to join the conspiracy. Mere association with conspirators is not enough.

Furthermore, since there was no evidence offered to prove the alleged overt acts designated in the indictment of a meeting by the defendant on June 16, 1975, with other persons driving an automoible bearing New York State license #109 EFL, then that overt act has been withdrawn from your consideration, and must be entirely disregarded in arriving at your verdict as to the guilt or innocence of the accused of the offence of conspiracy charged in the indictment.

Admissions.

4. You must find beyond a reasonable doubt that any admission or confession alledgedly made by the defendant has been sufficiently corroborated by other independent evidence.

If you find that there was a statement made by this defendant and you do not find beyond a reasonable doubt the existence of independant evidence indentifying him as either a person who conspired to perform the acts alleged in the indictment or he must be indentified beyond a reasonable doubt as one of the perpetrators of the crimes charged. The defendant cannot be

convicted on an admission made after the fact unless there is corroborations, including that of his indentity, of each and every part of his admission.

Identity.

5. The evidence in this case raises the question of whether the defendant was in fact the criminal actor and necessitates your resolving any conflict or uncertainty in testimony on that issue.

The burden of proof is on the prosecution with reference to every element of the crime charged and this burden includes the burden of proving beyond a reasonable doubt the identity of the defendant as a perpetrator of the crimes charged.

Knowledge.

6. In order for you to find the defendant guilty you must find beyond a reasonable doubt that he knew that there would be dangerous weapons used and such were in fact loaded with ammunition or capable of being fired. If you find that the Government has not proven this to you beyond a reasonable doubt, then you must acquit the defendant. Further, if you find that any of the weapons were incapable of being fired, then you must acquit the defendant of forcible bank robbery and bank larceny.

7. Unless you find beyond a reasonable doubt that the defendant as an aider or abettor knew that the principal was armed and knew what he was armed with, then you must find him not guilty of bank robbery and bank larceny.

That unless you find beyond a reasonable doubt: the defendant took money from a federally insured savings and loan association; that the taking was accomplished through use of force

and violence or by intimidation and from persons or the presence of individuals other than defendant; the money taken was in the care, custody, control, management or possession of the association, the taking was done with wrongful intent. In order to convict for aggravated bank robbery and bank larceny, you the jury must find beyond a reasonable doubt additional elements that the defendant assaulted or placed in jeopardy the lives of any person by use of a dangerous weapon or device. If you find that the Government has failed to prove one of these elements to your satisfaction, beyond a reasonable doubt then you must find the defendant not guilty of each and every count contained in the indictment.

Fingerprints.

If you find that the prosecution did not show that the objects, namely the automobile upon which the defendant's fingerprints were discovered were generally inaccessible to him, the evidence should be excluded by you from your consideration.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

CR No. 1975-160

HAROLD JACOB MIMS,

Defendant.

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Respondent,

vs.

HAROLD JACOB MIMS,
Defendant-Appellant.

No. 76-1444

AFFIDAVIT

ANTHONY J. AMOROSO, being duly sworn, hereby deposes and says:

1. Deponent is a duly licensed attorney, admitted to practice in the District Court for the Western District of New York, who was duly assigned to represent the above named defendant both at trial and on the instant appeal.

2. On the 21st day of January, 1977, deponent served a copy of Brief and Appendix for Appellant on the offices of the United States Attorney, U.S. Courthouse, 100 State Street, Rochester, New York 14614, attorney for the above named Plaintiff.

Anthony J. Amoroso

Anthony J. Amoroso

Sworn to before me this
21st day of January, 1977.

Notary Public
My Commission Expires March 30, 1977

INDEX OF EXHIBITS

1. Advice of Rights and Waiver form, July 1, 1975 - Government's Exhibit 35.

2. Advice of Rights and Waiver form, July 2, 1975 - Government's Exhibit 37.

3. Group of four photographs taken June 30, 1975 - Government's Exhibit 10.

4. Photograph by 1973 Pontiac Le Mans - Government's Exhibit 14.

5. Photograph of interior of 1973 Pontiac Le Mans - Government's Exhibit 15.

6. Photograph of three latent fingerprints - Government's Exhibit 16.

7. Three fingerprint impressions - Government Exhibit 17.

8. Fingerprint card of Harold Jacob Mims - Government Exhibit 18.